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Fiftieth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 February 1994, at 3 p.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

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The meeting was called to order at 3.10 p.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIFTH SESSION (agenda item 17) (continued) (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, E/CN.4/1994/70, E/CN.4/1994/71 and Add.1; E/CN.4/Sub.2/1993/35; E/CN.4/1993/58 and Add.1)

1. Mr. IBARRA (International Indian Treaty Council) said that the proposals and recommendations contained in Sub-Commission resolutions 1993/44, 1993/45 and 1993/46, and in its decision 1993/110, were essential for the attainment of the objectives defined by the General Assembly in its resolution 48/163, in which it had proclaimed the International Decade of the World's Indigenous People. The International Indian Treaty Council considered that the Decade should not merely be an occasion for symbolic activities and eloquent speeches, but that it must also lead to positive measures in favour of indigenous people and communities. In that resolution, the General Assembly specified a number of activities that were to be implemented in collaboration with organizations representing indigenous people. The United Nations system and States were also invited to adopt an innovative approach, and to ensure that indigenous people participated in all areas of concern to them. The establishment of a permanent forum for indigenous people was also envisaged, as had been proposed at the World Conference on Human Rights in Vienna. In that regard, his organization considered it was for the Working Group on Indigenous Populations to define the objectives and structure of that permanent forum, and the way in which indigenous peoples might participate in it, for the Working Group was currently the only body in whose debates the organizations representing indigenous people had an opportunity to participate.

2. In its resolution 48/163, the General Assembly requested that the technical meeting to be convened to review the International Year of the World's Indigenous People should consider preparations for the Decade. His organization considered that it was also essential that the Centre for Human Rights should have the staff and technical and material resources necessary to achieve the objectives of the Decade. The United Nations Conference on Environment and Development and the Vienna Conference had both recognized the contribution of the indigenous Indian peoples to the progress of humankind. In the same spirit, the Working Group on Indigenous Populations had prepared a draft declaration which, in broad outline, endorsed the historical claims of indigenous peoples. The International Indian Treaty Council had circulated that text and considered that participation by the indigenous organizations must be secured in the subsequent stages of the debate on the draft declaration. Lastly, his organization urged the Commission to take the necessary steps to attain the objectives set forth in General Assembly resolution 48/163.

3. Mr. AL-KHASAWNEH (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) said that many criticisms had been levelled at the Sub-Commission with regard to the rationalization of its work. Yet that question had always been uppermost in the minds of the members of the Sub-Commission, the last meeting of which had been partly devoted to its consideration. The fact that that consideration had not taken place in a plenary meeting was not something to which too much importance should be attached. It was also important to keep in mind that the Sub-Commission had already concerned itself on previous occasions with the rationalization

of its work, and that a number of improvements had been made in that regard, as was acknowledged in Commission resolution 1993/28, which took note with appreciation of "the significant steps taken by the Sub-Commission to rationalize and streamline its work". Since the Sub-Commission already had difficulty in completing its work in the time available to it, it would not be reasonable to devote more time to the question of rationalization of work.

4. The Sub-Commission had also been criticized for the large number of studies it conducted. He wished to point out that, in its resolution 1993/28, the Commission urged the Sub-Commission to "give due regard to new developments in the field of human rights". That could not be done without undertaking new studies. Several members of the Sub-Commission had felt that it must not confine itself to academic studies and that it should try to adapt to the world situation and relate more closely to reality. He thought, however, that academic studies were very important for the purposes of standard-setting.

5. On the question of establishing a working group on contemporary forms of slavery, he acknowledged that the wording of the Sub-Commission's decision was not as clear as it could have been. It should thus be made clear that the intention was to discontinue the work of the existing Working Group at Sub-Commission level once the new working group had been established. The Commission should also give its attention to the question of the proliferation of non-governmental organizations (NGOs), some of which availed themselves of every conceivable opportunity to address specific issues. Any attempt to rationalize the Sub-Commission's work would be futile unless that question was tackled, albeit in a manner that did not detract from the freedom of the NGOs to take the floor.

6. Finally, he agreed that both the question of minorities and that of economic and social rights had not received as much attention in the Sub-Commission as they deserved. However, the picture was not as bleak as had been painted by the United States representative in his statement. The Sub-Commission would take account of any constructive ideas communicated to it in that regard.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

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(agenda item 10) (E/CN.4/1994/24, 25 and Add.1, 26 and Corr.1 and Add.1, 27, 28, 29 and Add.1, 30-33, 88 and Corr.1, 93 and Corr.1, and 103; E/CN.4/1994/NGO/5, 8, 10, 11, 18, 19, 21 and 25; E/CN.4/Sub.2/1993/8, 9, 23/Rev.1, 24 and Add.1 and 2, and 25; E/CN.4/Sub.2/1992/10; A/48/520 and 579)

7. Mr. RHENÁN-SEGURA (Chairman-Rapporteur of the Working Group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that, at its second session, the Working Group had embarked on the first reading of the draft protocol. It had taken as a basis for discussion the draft text proposed by the Costa Rican Government aimed at establishing a system for visiting places of detention. The underlying idea was a simple one: as torture was practised in premises where detainees were held incommunicado, the best way of combating that scourge was to have access to places of detention, in order to ascertain what was taking place in them. The draft was essentially preventive in nature. It did not set out to censure or punish States or to put Governments on the defensive. Rather, the intention was to establish a dialogue between the State authorities and the monitoring body, with respect for confidentiality and in a spirit of cooperation.

8. The main obligation of States was to ensure that any person deprived of liberty by a public authority, or with the agreement of that authority, should be protected from torture or ill-treatment. For a State, that obligation stemmed from its status as a State party to the Convention against Torture. By ratifying the protocol or acceding to it, States would undertake to permit visits to places of detention, which would be carried out by a sub-committee or some other mechanism established for that purpose. Periodic visits would be made to all places of detention situated in the territory under the jurisdiction of the State. In no case would the sub-committee, any mechanism established for that purpose, its members, or the Committee against Torture, be called upon to give an opinion regarding the lawfulness of the deprivation of liberty.

9. He noted that some 30 States members of the Commission, a large number of observer countries, the representative of Switzerland, the representative of UNESCO, experts from the International Committee of the Red Cross (ICRC) and from a number of NGOs, as well as various other experts of international standing had participated in the Working Group's proceedings. The first 10 articles of the protocol had been drafted and subsequently considered in plenary. The articles had been debated and drafted by theme, and the title of the future international instrument would be determined when the entire document had been drafted and had passed a second reading. It was thus necessary for the Working Group to continue with its task, in view of the extremely satisfactory results achieved at the previous session. Its mandate should therefore be renewed, in the same terms as previously, to enable it to complete its consideration of the remaining articles and to proceed to a second reading of the draft text.

10. Mr. HUSSAIN (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) said that freedom of opinion and expression was an indispensable prerequisite for the establishment of democratic and pluralist societies with a human face. In the exercise of his mandate, he would base himself on the provisions of the Universal Declaration of Human Rights and, where appropriate, the International Covenant on Civil and Political Rights. He would also take into account the work being done by other bodies of the Commission and Sub-Commission on the right to freedom of

opinion and expression. In deciding upon his methods of work, he would draw upon established practice and the experience acquired by the Commission's various thematic mechanisms.

11. For the reasons already referred to in his report (E/CN.4/1994/33), he had been unable to embark upon his task before the end of 1993. The report therefore contained only preliminary considerations, which would be developed in subsequent reports. He intended to adopt a flexible and dynamic approach so as to consider various situations on their merits and to focus in an action-oriented manner on individual cases and specific circumstances. Moreover, he would take account of credible information brought to his attention and carry out his work with discretion and independence, in collaboration with the Governments concerned. He had sent a circular letter to all Governments explaining his mandate, and had also written to NGOs requesting information. He also hoped to meet with the other special rapporteurs with a view to the coordination of their work. He looked forward to any suggestions, observations and comments from members of the Commission which might help him to carry out his task.

12. Mr. RODLEY (Special Rapporteur on the question of torture), introducing his report (E/CN.4/1994/31), paid tribute to his predecessor, Mr. Kooijmans, and said that while he had decided to make continuity a cornerstone of his work, he had nevertheless taken certain initiatives to meet the desire for harmonization of the work of the thematic mechanisms that was often expressed by the Commission. Accordingly, he had kept abreast of the work of his colleagues with analogous mandates, and in particular the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Ndiaye, within the limits of the resources available. In pursuit of that same goal of consistency and harmonization, he had invited the sources of the information provided to him to comment on the replies of Governments, with a view to facilitating dialogue with them, as was explained in paragraph 9 of his report. There too, the lack of resources had not made matters any easier. He had also taken the initiative of adding "observations" at the end of some country-specific entries, in order to give readers a clearer idea of situations which were sometimes opaque as a result of having been condensed.

13. Two issues of a general nature deserved the Commission's full attention. The first related to urgent appeals to Governments, and was spelled out in paragraphs 6 to 8 of the report. The other issue concerned the activities of armed opposition groups, which, except in the case of torture practised by groups having the status of parties to an armed conflict within the meaning of international humanitarian law, did not fall within his mandate, as was explained in paragraphs 12 and 13 of his report. However, he considered it important to acknowledge situations involving terrorism, insurrection and other challenges to normal law enforcement.

14. In paragraphs 15 to 17 of his report, he pointed out that no Member State urged to do so by the Commission had invited him to conduct a visit - not even Indonesia, in spite of Commission resolution 1993/97 on the situation in East Timor. However, he hoped that, if he was provided with the necessary resources, he would be able to make visits to a few countries with whose Governments he had had contacts.

15. The question of cooperation between United Nations human rights bodies was dealt with in paragraphs 19 to 22 of the report. The World Conference on Human Rights had already offered opportunities for valuable exchanges of views, and the forthcoming meeting of the Commission's special rapporteurs and chairpersons of working groups should also be fruitful. In addition, it was to be hoped that the establishment of a post of High Commissioner for Human Rights would further enhance that cooperation. As well as the human rights mechanisms, cooperation must also extend to the United Nations crime prevention and criminal justice programme. He was happy to have been able, through his own resources, to attend the second session of the Commission on Crime Prevention and Criminal Justice, whose activities were relevant to his own mandate. He also hoped to be able to attend the regional preparatory meetings for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as the Congress itself.

16. As members of the Commission would have noted, the lack of resources acted as a brake on the activities described in part I of the report, which he must perform in order to discharge his mandate. That lack of resources meant that low priority had to be assigned to the transmittal to Governments of non-urgent but often extremely important information, and to correspondence with those Governments, which was none the less indispensable. He was not sure that the secretariat would be able to service his visits to countries that might invite him to visit them. Even the preparation of the annual report was a task that strained existing resources. He was obliged to urge the Commission to consider what could be done to alleviate that problem.

17. Of course, the problem of resources would be less pressing if torture was less widespread. In paragraph 670 of his report, he pointed out that that state of affairs reflected a lack of political will to eradicate it, a lack of will exemplified by impunity. Perpetrators of torture enjoyed impunity in two ways: first, in cases of prolonged incommunicado detention, during which the interrogators considered persons detained to be at their mercy, and secondly, when they knew that they were beyond the reach of normal legal processes. Torture committed or tolerated by public officials was a crime under national law, a crime of State and a crime under international law. That crime flourished when incommunicado detention was permitted or when impunity was enjoyed. Whatever the Commission could do to pierce the armour of impunity would help to stop torture. He recommended that the Commission should treat with the utmost scepticism any official assertions that allegations of torture were false or that the authorities concerned were committed to stopping it when it occurred.

18. Mr. JOINET (Chairman-Rapporteur of the Working Group on Arbitrary Detention), introducing the report of the Working Group (E/CN.4/1994/27), said that in the course of 1993 the Group had had to deal with 183 individual cases which had been transmitted to 31 Governments for their comments, that it had addressed 18 appeals for urgent action to 14 Governments, and that at the three sessions held during the year it had adopted 67 decisions concerning 286 individual cases. His remarks would focus mainly on the responses to the guidelines given - directly or indirectly - to the Working Group by the Commission.

19. In response to resolution 1993/41, the Working Group had considered the question of special courts. In doing so, it had drawn a distinction between "revolutionary" or "people's" courts on the one hand, and "military courts" on the other. As to the first category, it had considered that they were courts based on an ideology which was incompatible with the guarantees envisaged by international instruments. As to the second category, it had considered that, while article 14 of the International Covenant on Civil and Political Rights did not prohibit military courts, it provided for no derogation from guarantees of the right to a fair trial in the case of such courts; that the status of a court as special or otherwise essentially depended on whether the guarantees it provided met the requirements of article 14; that, in practice, consideration of the communications transmitted on that question showed that those requirements were seldom met; and lastly, that in addition to that serious lack of guarantees, there was also a factor of arbitrariness, because of the corporative nature of the membership of those courts, which gave the impression that a double standard was applied, depending on whether the person being tried was a civilian or a member of the military. Resolution 1993/41 also referred to habeas corpus. On that question, the Working Group noted that habeas corpus was one of the most effective means of preventing and combating arbitrary detention. In a State governed by the rule of law, it should thus be considered as an individual right from which there could be no derogation, even in a state of emergency. The Working Group thus hoped that the Commission would support the initiatives taken by the Sub-Commission with a view to drafting a declaration stipulating that habeas corpus was a right from which there could be no derogation.

20. In accordance with the wish expressed by the Commission in its resolution 1993/46, the report of the Working Group now dealt separately with cases of arbitrary detention in which the victims were women. On the question of following up the recommendations made in the context of the thematic procedures referred to in Commission resolution 1993/47, the Working Group had decided to give thought to that complex question and to engage in appropriate consultations before suggesting to the Commission a follow-up mechanism for its decisions. Resolution 1993/48 raised the question of the possibility of making serious violations of human rights committed by non-State entities punishable under international law. The Working Group had provisionally concluded that, according to the current wording of its mandate, the word "detention" applied only to detention ordered by a State. It was, however, aware of the importance and topicality of that question which it intended to discuss, envisaging that it might declare itself competent at least in cases involving armed groups whose activities fell within the scope of the Geneva Conventions on humanitarian law in time of war, in particular their common article 3.

21. He then turned to the responses to the recommendations made by the Commission in its resolution 1993/36 on consideration of the report of the Working Group. With regard to the option - granted to it by the Commission - to take up cases on its own initiative, the Working Group had decided that, outside its sessions, it could take up cases on its own initiative provided that at least three of its members so agreed, and that preferential consideration would be given to subjects to which the Commission had drawn attention. In order to improve coordination with other mechanisms, as recommended in paragraph 7 of resolution 1993/36, the Working Group had

decided systematically to transmit its decisions to the relevant protection organs. With regard to the admissibility of cases submitted to it when they were under consideration by other bodies, the Group considered that if another body considering the case was dealing with the evolution of the human rights situation on a thematic or country basis, the principle of non bis in idem did not apply, but that it did apply when, as in the case of the Human Rights Committee, that body reached a decision on particular cases of violations. The Group had, however, requested the opinions of the Chairman of the Human Rights Committee and the serving Chairman of the Sub-Commission's Working Group on Communications, with a view to discussing the matter at its next session.

22. On the question of urgent appeals, he noted that that procedure was constantly evolving. He thanked those Governments that had taken account of his appeals, particularly the Governments of Cuba, Kenya, Nigeria, Viet Nam and Mauritania. With regard to in situ visits, the first, which was to have been to the United States Naval Base at Guantanamo, Cuba, had been cancelled as the 200 or so Haitians detained there had been freed by the competent district court. The first visit would thus take place in 1994, at the invitation of the Government of Viet Nam. The Group hoped that that example would be followed by the Governments of Cuba, Indonesia and Zaire, among others, as requested by the Commission in its resolutions 1993/63, 1993/97 and 1993/61. The Group also hoped it would be able to visit China in order to gain a better understanding of the problems of that country and to make specific recommendations. Lastly, he noted that Cuba, the Syrian Arab Republic, Ethiopia and the Sudan had reacted to decisions adopted by the Group, and that the Indonesian and Peruvian Governments had informed him that the persons detained had been freed.

23. Mr. TOSEVSKI (Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances) introduced the report of the Working Group (E/CN.4/1994/26 and Corr.1 and Add.1). He recalled that, on 18 December 1992, the General Assembly had adopted the United Nations Declaration on the Protection of All Persons from Enforced Disappearance - a text of paramount importance for the Working Group. In response to Commission resolution 1993/35, the Group had invited Governments and NGOs to provide it with information on the implementation of the Declaration. In view of the small number of replies received, the Working Group requested the Commission to renew its appeal to Governments and to entrust the Working Group with the task of monitoring the application of the Declaration.

24. He said that in 1993 the Working Group had transmitted over 3,000 new cases of enforced disappearances to a total of 30 Governments and that, since its establishment, the number of countries in which disappearances had allegedly occurred had risen from 58 in 1992 to 63 in 1993. Turning to the question of disappearances in the former Yugoslavia, he referred members of the Commission to paragraph 37 of his report, but feared that the figures given therein, which dated from 1991, had since been far exceeded, particularly because of the conflict in Bosnia and Herzegovina. The problem had assumed such proportions that the United Nations could not but take measures. Needless to say, that issue would be considered again under agenda item 12, when the Commission considered the report of the Special Rapporteur, Mr. Mazowiecki, on the human rights situation in the territory of the former

Yugoslavia. Pursuant to resolution 1993/7, the Special Rapporteur, in consultation with the Working Group on Enforced or Involuntary Disappearances and ICRC, had requested a member of the Working Group, Mr. van Dongen, to conduct a mission to Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to determine, following consultations with relevant government officials and representatives of intergovernmental and non-governmental organizations and families of those who had disappeared, what mechanisms might be proposed with a view to elucidating their fate. That mission had taken place from 4 to 13 August 1993.

25. The Working Group had extensively debated Mr. van Dongen's report on the mission at its October and December 1993 sessions. It had decided to submit a proposal to the Special Rapporteur for the establishment of "special process" procedure to deal with the question of missing persons, because disappearances in the former Yugoslavia were of such a nature that the Working Group's traditional methods of work could not be applied. The special procedure should be implemented jointly by the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia and one member of the Working Group on Enforced or Involuntary Disappearances.

26. He was pleased to note that States were cooperating more and more with the Working Group. Although certain countries had never replied to his requests for information, the majority of States had done so. Yet it was a matter of extreme concern that the activities of the Group were still hampered by the inadequacy of the resources placed at its disposal. Owing to the increase in the number of special procedures established by the Commission, the Group had had to work with reduced staff in 1993. The backlog of 8,000 cases from previous years had been increased by the 11,000 cases received in 1994 concerning the former Yugoslavia. On behalf of the Working Group, he appealed to the Commission to do everything in its power to increase the staff support which the Group urgently needed to carry out its mandate effectively.

27. Mr. YUNGE (Chile) said it was gratifying to take the floor in his capacity as a parliamentarian and a member of the Human Rights Commission of the Chamber of Deputies of Chile, whereas a few years previously he had been calling upon the international community to show solidarity against the dictatorship then afflicting his country. In his delegation's view, arbitrary detention was one of the most pernicious violations of human rights, and affected the exercise of all other rights. Historically, unlawful deprivation of liberty was one of the mechanisms most frequently used by repressive regimes to intimidate and subjugate the population. It was enough for a small proportion of the population - a few hundred or thousand people - to be arrested and detained, for all members of society to take fear and, as it were, impose a regime of self-censorship on the enjoyment of their fundamental rights. Furthermore, permanent and systematic recourse to arbitrary detention exposed the population to two of the most horrifying violations of human rights, namely, enforced disappearances and torture or other cruel, inhuman or degrading treatment.

28. His delegation commended the activity of the Working Group on Enforced or Involuntary Disappearances, and in particular the fact that that work was performed discreetly, objectively and entirely independently. It shared the

concerns expressed by the Group in its report, particularly when it stressed that a state of emergency was often a means of infringing the freedom of individuals and imposing political and social repression. The arbitrary detention of Nobel Peace Prize laureate Aung San Suu Kyi was a sad example of that process. Furthermore, like the Working Group, his delegation condemned the use of vague and imprecise legal wording to designate acts punishable under criminal law. It was unfortunately all too common for political activists or defenders of human rights peacefully opposing an established regime to be arrested and convicted for "treason", "enemy propaganda" or "subversion".

29. His delegation could not but regret the lack of resources made available to the Working Group; if those resources were not increased, the Group would be unable to undertake more missions and offer assistance and advice to Governments requesting them. In that connection, he noted with satisfaction that the Government of Viet Nam had invited the Working Group to visit that country.

30. Every democratic regime must remain vigilant and constantly improve the protection of human rights. Chile's Parliament was considering a draft law aimed at providing more effective guarantees of the right to personal freedom. States must also pursue a preventive policy concerning torture; in that regard, his delegation welcomed the progress made in drafting the optional protocol to the Convention against Torture. It firmly believed that, under the protocol, States parties should be required to guarantee unhampered access to places of detention and the opportunity for members of the Committee responsible for the implementation of the protocol to speak confidentially with persons deprived of their liberty, that the best possible coordination must be achieved between the organs responsible for implementation of the Convention against Torture and of the Protocol, and that the membership of the organ responsible for implementation of the protocol would have to be such as to guarantee its independence and competence. Lastly, effective coordination should be ensured with regional mechanisms providing protection against torture.

31. Mrs. MARKIDES (Cyprus) condemned torture as an abhorrent practice and one of the most atrocious violations of human dignity. As the Special Rapporteur had stressed, when considering the question of torture, incommunicado detention and the de jure or de facto impunity of the torturers must also be taken into account. The World Conference on Human Rights had reaffirmed that under human rights law and international humanitarian law, freedom from torture was a right which must be protected under all circumstances, and it had urged all States to put an immediate end to the practice of torture. It had also called for the early adoption of an optional protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. Cyprus, as a sponsor of Commission resolution 1992/43, participated in the Working Group on the draft optional protocol. Moreover, Cyprus had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and a Cypriot ambassador was a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in his personal capacity. Cyprus fulfilled its obligations under the Convention against Torture, and had submitted its initial report to the Committee against Torture in November 1993. The

Committee had declared itself very satisfied with the legislative and administrative arrangements which guaranteed respect for human rights values in Cyprus.

32. With regard to the question of enforced or involuntary disappearances, her delegation could not but share the concerns expressed by the Working Group. The adoption by the General Assembly in 1993 of the Declaration on the Protection of All Persons from Enforced Disappearance was an encouraging achievement in combating disappearances worldwide. Unfortunately, the policy and practice of many States continued to run counter to the Declaration. The World Conference on Human Rights had called upon all States to take effective measures to prevent, terminate and punish acts of enforced disappearances. It was to be hoped that the High Commissioner for Human Rights would also tackle the problem in cooperation with States.

33. The people of Cyprus had been experiencing the drama of disappearances for more than 20 years. The problem of missing persons - one of the most tragic aspects of the invasion of Cyprus - was still unresolved and the occupying Power refused to inform families of the fate of those missing in breach of the provisions of the first Protocol Additional to the Geneva Conventions. The European Commission of Human Rights, which had examined that issue, had concluded that the occupying Power had violated article 5 of the European Convention on Human Rights. Furthermore, the relatives of the missing had been deeply disappointed that the Committee on Missing Persons in Cyprus, a tripartite committee set up in 1981, had not yet produced credible information on the fate of any missing person, and that the situation of more than 1,600 persons had not yet been ascertained. Her delegation reaffirmed its support for the efforts being made by the Secretary-General to elucidate the fate of the missing persons in Cyprus. She appealed to members of the Commission to take the necessary steps to ensure the implementation of its own resolution on Cyprus.

34. Mr. BOUCAOURIS (Greece), speaking on behalf of the European Union, noted that over the years the United Nations had gradually been strengthening protection against torture, and that the World Conference on Human Rights had emphasized that one of the most atrocious violations against human dignity was the act of torture. Having noted with interest the report of the Special Rapporteur, Mr. Rodley, the European Union regretted that the encouragement to Governments expressed by the Commission in its resolution 1993/40, to give serious consideration to inviting the Special Rapporteur to visit their countries had met with no response. It was seriously concerned about the persistence of systematic torture, and urged all States which had not yet done so to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

35. It was also disturbing that, even where legislation existed to curb torture and ill-treatment, those responsible for conducting torture often acted with impunity. That concern had also been expressed by the World Conference on Human Rights in paragraph 91 of part II of the Vienna Declaration. The European Union also reiterated that, as was also stated in the Vienna Declaration, States should abrogate legislation leading to impunity for those responsible for grave violations of human rights and that they should prosecute such violations, thereby providing a firm basis for the rule

of law. It urged all States to bring their legislation into line with the Convention against Torture and to recognize the competence of the Committee against Torture to receive communications from individuals, as provided for in article 22 of the Convention. States must also seek to ensure effective respect for the Principles of Medical Ethics relevant to the role of Health Personnel, particularly Physicians in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly.

36. With regard to the future, the European Union hoped that States would speedily conclude the drafting of the optional protocol to the Convention against Torture, aimed at establishing a preventive system of regular visits to places of detention. Regional mechanisms for the prevention of torture, like that set up by the European Convention for the Prevention of Torture, had a very important role to play. Lastly, the European Union wished to stress the need to increase assistance to victims of torture with a view to securing their physical, psychological and social rehabilitation. It appealed to all Governments to contribute generously and regularly to the United Nations Voluntary Fund for the Victims of Torture. For its own part, in addition to the national contributions of the member States of the European Union to the Voluntary Fund, the European Union had established a special budget line of ECU 2 million for the rehabilitation of torture victims. The international community must do its utmost to prevent the terrible scourge of torture from persisting into the twenty-first century.

37. Mr. MIRANDA CASTILLO (Observer for Nicaragua) said that the right to life was the most fundamental of human rights. The present Nicaraguan Government was the first one in decades to have promoted human rights for all on a non-sectarian basis. In that regard, the President of Nicaragua, in her role as national arbitrator, was above political quarrels. The efforts now being made to promote and protect the right to life were all the more praiseworthy in that Nicaragua had only recently emerged from a cruel war which had left enormous quantities of armaments throughout its territory. Nevertheless, the number of persons killed every year by weapons was substantially lower than that in several countries which were regarded as more developed. The Nicaraguan authorities were doing their utmost to consolidate enjoyment of the right to life. It was satisfying to note that the situation in Nicaragua in 1994 with regard to human rights was in no way comparable to what it had been in 1989, and that its citizens were now living in peace and dignity. Action to promote human rights would naturally continue, so that the Nicaraguan people could enjoy the full range of their rights, as they deserved.

38. Referring to the report of the Working Group on Enforced or Involuntary Disappearances, he wished to make a few constructive comments concerning the part of the report devoted to Nicaragua. He noted that the cases referred to had already featured in previous reports of the Working Group, and pointed out that no case of disappearance had been reported in 1993. One hundred and one cases were considered as "outstanding". In paragraph 347 of the report, mention was made of violations of the right to life of 705 Nicaraguans, but it was not specified whether those alleged violations were cases of disappearance. The Working Group should confine itself to its mandate, and therefore to consideration of cases of enforced disappearance. Furthermore,

the Working Group should not automatically take into account all cases reported by NGOs, which would give the misleading impression that the number of violations was escalating.

39. Mr. NIEGO (International Federation for Human Rights, IFHR) said that his organization, its Peruvian affiliate, the Asociación Pro Derechos Humanos (APRODEH), and the Coordinadora Nacional de Derechos Humanos were deeply concerned at the measures recently taken by the Peruvian authorities after the discovery of the massacre of nine students and a teacher at the university of La Cantuta following their abduction on 18 January 1992. Thanks to the testimony of students, eight members of the military had been arrested for their participation in that massacre. The military hierarchy had attempted to prevent the accused from being tried by a civil court, insisting that they should be tried before a military court. The Prosecutor conducting the investigation had refuted that argument, pointing out that the military authorities denied having ordered an act of that nature. The Prosecutor had asked for the names of the detainees but his request had been rejected by the military authorities; he had therefore not been allowed to interrogate the detainees and the families of the victims had not been permitted to bring a criminal indemnity action. It was in that context of thwarted justice that, on 7 February 1994, Congress had adopted a law with retroactive effect making the rules defining the jurisdiction of the military courts more flexible. All requests by human rights protection organizations that an independent body should be entrusted the task of investigating the massacre had remained unanswered. The military authorities and the executive were obviously trying to conceal the truth and to encroach upon the prerogatives of the judicial branch. In view of that negation of the rule of law, IFHR, APRODEH and the Coordinadora Nacional called on the Commission to condemn the attitude of the Peruvian authorities with the utmost vigour.

40. Mr. GROSSE (International Federation for Human Rights) said that IFHR was very concerned at the situation in the Syrian Arab Republic, where a state of emergency had been in force for 31 years and where the most elementary rights of detainees, particularly the right to a fair trial, were flagrantly and systematically violated. Almost 5,000 persons were detained under the emergency laws, without charge or trial; about 100 others had been convicted by special courts following unfair trials, and 515 prisoners of conscience, including 15 human rights activists, had been tried by the State Security Court. An appeal by more than 80 NGOs on behalf of those activists had failed to elicit a response from the Syrian Government. IFHR was also concerned at the poor conditions in which the detainees, five of whom had already died, were held. Although, in its decisions concerning the Syrian Arab Republic, the Working Group on Arbitrary Detention had considered the detention of all those persons whose cases had been submitted to it to be arbitrary, the Syrian Government had not provided any information whatever regarding them. IFHR and its affiliate, the Organization of Committees for the Defence of Democratic Freedoms and Human Rights in Syria, therefore renewed their appeals to the Syrian Government to release prisoners of conscience immediately and unconditionally, to put an end to torture and to punish all those who practised it, to abolish the courts of special jurisdiction and to respect guarantees of the right to a fair trial.

41. In Algeria, about 10,000 persons had been interned in the south of the country without charge or trial since the interruption of the electoral process and the promulgation of the state of emergency. Courts of special jurisdiction had replaced courts of general jurisdiction, in violation of internationally recognized standards of fairness, and the right to defence was constantly flouted. Hundreds of persons had been sentenced to death following unfair trials, and several dozen had already been executed. Torture and inhuman and degrading treatment had become commonplace in police stations, State security premises and prisons. The right to life was flagrantly violated, both by armed Islamic groups and by the security forces. More than 3,000 persons had lost their lives as a result of political violence. IFHR resolutely condemned violence, regardless of its source and urged the Algerian Government, which had ratified the International Covenant on Civil and Political Rights and the Convention against Torture, to respect non-derogable rights and the right to a fair trial, and requested the Commission to include the question of the situation in Algeria in its agenda.

42. In Tunisia, the conditions for detaining persons in custody specified in article 13 (b) of the 1987 Code of Criminal Procedure were systematically violated by the police, who indicated spurious dates of arrest in their reports in order to conceal periods of incommunicado detention during which detainees were subjected to torture and cruel and inhuman treatment. As Tunisia had made considerable efforts to acquire the image of a country that respected human rights and since the announcement of various measures it had taken had given rise to great hopes, IFHR called upon the Tunisian authorities to give effect to their promises. It also requested the Commission to monitor flagrant and systematic violations of the right to a fair trial in Tunisia with the greatest care.

43. Lastly, IFHR wished to condemn the arrest in Gabon, by special river police units, of 266 migrants interned on 2 February 1994 in three 15-metre-square cells at the Gros Bouquet gendarmerie detention camp, and the death in suspicious circumstances of a number of the detainees, whose bodies had been found the following day. IFHR requested the Gabonese authorities to release those still detained immediately and to provide them with the necessary care as a matter of urgency. It also requested the Commission to appeal to the Gabonese Government to ensure that those persons were treated in accordance with the provisions of international instruments.

44. Ms. SARIS (France-Libertés: Fondation Danielle Mitterrand) said that her organization was most concerned by the situation in Peru, where political violence had claimed 1,269 victims in 1993 and where torture had become institutionalized. She cited the case of the 2 Cantoral brothers, tortured by the anti-terrorist unit of the Lima police, as well as the case of 12 peasants from San Ignacio tortured by the local police. In view of the flagrant violations of human rights being committed in Peru, whether by the authorities or by Shining Path terrorists, the Commission should appoint a special rapporteur to look into the situation in that country.

45. In Colombia, where a state of emergency had been in force for 40 years, enforced disappearances continued to be a systematic practice in a context of armed conflicts and political violence. Between January and September 1993, for example, 132 persons had disappeared for political or presumably political

reasons. According to the Working Group on Enforced Disappearances, 25 of the cases of disappearance submitted to it in 1992 and 1993 were attributable to agents of the State or to paramilitary groups linked to agents of the State, and 700 of the 865 cases reported in the previous 10 years had still not been elucidated. It would thus be well for the Working Group on Enforced Disappearances and the Special Rapporteur on the question of torture to visit that country, and for the Commission to appoint a special rapporteur to study the human rights situation in Colombia.

46. Lastly, in Iraq, despite the affirmations of the Government, the human rights situation had scarcely improved. Expulsions of Kurdish families continued in the Kurdish regions under Iraqi control. Thousands of persons were still imprisoned and tortured in the local prisons and in the control posts between the autonomous Kurdish region and the regions under Iraqi control, travellers were stripped of their belongings, and several young women had been raped or had disappeared during identity checks. A systematic policy of repression was also being pursued in the regions of the south, inhabited mostly by Shiites. According to corroborated accounts, 30 persons were detained and had been tortured at the Security Forces' detention centre in Basra. Torture and cruel, inhuman or degrading treatment continued to be a feature of Iraqi policy. Her organization therefore requested the urgent deployment of United Nations observers throughout the territory of Iraq in order to monitor violations of human rights, and the placing of all Kurdish territory, including the area beyond the 36th parallel, under a special United Nations mandate. Respect for human rights and compliance with Security Council resolution 688 (1991) should also be prerequisites for a lifting of the embargo imposed on Iraq.

47. Ms. ASSAAD (International PEN) welcomed the appointment of Mr. Hussain as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, since in many countries writers and journalists were persecuted for having sought to exercise that right. Her organization had already brought 700 cases of such persecution in over 90 countries to the attention of the Special Rapporteur, and would assist him in every way in the performance of his task.

48. Long-term imprisonment was one of the methods most frequently used to silence opponents, particularly in China, where 25 Chinese and Tibetan journalists and writers were serving long prison sentences for having tried peacefully to exercise their right to freedom of expression and association. Most of them had been arrested following the events in Tiananmen Square in 1989, accused of counter-revolutionary propaganda, and convicted following trials which fell well short of international standards of fairness. Consequently, International PEN called on the Chinese Government to amend the legislation under which persons could be detained solely for having expressed their views, and to release all such detainees.

49. International PEN also condemned the repressive measures imposed on writers in Viet Nam and Myanmar. Eight persons working for an underground magazine in Viet Nam had been sentenced to long terms in prison, although they had never advocated violence to promote their objectives, and 2 Burmese writers had been sentenced to 20 years' imprisonment in October 1993 for expressing their opposition to the adoption of new constitutional measures.

In the Syrian Arab Republic, too, six writers and journalists had been arrested for their peaceful political activities, such as distributing leaflets alleging violations of human rights. The most striking case was that of a writer who had been arrested in 1970 and sentenced to 15 years in prison for writing books about the Syrian military, and who had still not been released. Lastly, in Cuba, many writers and journalists who had called for an improvement in the human rights situation had been imprisoned in 1991 and 1992. Two of them were still in prison, where they were serving sentences of 8 and 10 years respectively for engaging in "enemy propaganda".

50. There were many other means of silencing critics of a regime: intimidation, persecution, short-term detention accompanied by ill-treatment and torture, and disappearance. More than 45 journalists had been killed between January and November 1993 in countries such as Turkey, Algeria, Mexico, India and Tajikistan. Although in the majority of cases those murders could not be directly attributed to government forces, the fact that the Governments of the countries concerned seemed reluctant to investigate the killings led to fears that those responsible were being allowed to commit such crimes with impunity, and in some cases even with the tacit approval of the authorities. Her organization called for full and impartial investigations into those killings, and for those found responsible to be brought to justice. Censorship and the "de-financing" of publications that criticized the authorities were other violations of freedom of expression that the Special Rapporteur should investigate. International PEN looked forward to working with the Special Rapporteur towards the goal of eliminating such practices.

51. Mr. GILANI (World Society of Victimology) said that the conflicts raging in various regions of the world showed that, more than ever before, there was a need to strengthen United Nations mechanisms for the protection of human rights, and to spare no efforts to prevent massive abuses and ensure respect for human rights in general, and in particular in conflict zones, especially where international peace-keeping forces were stationed.

52. Enforced or involuntary disappearances, while themselves a violation of human rights, also encouraged other abuses such as torture, in violation of the rules set forth in the Standard Minimum Rules for the Treatment of Prisoners and in the Code of Conduct for Law Enforcement Officials and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1979 and 1988 respectively. The best illustration of the failure by States to comply with United Nations resolutions, particularly those referring to enforced or involuntary disappearances, was provided by the situation in Jammu and Kashmir, where many persons were reported missing, and where repression by the Indian Security Forces, whose numbers were estimated at more than 500,000, impeded the freedom of action of the United Nations peace-keeping forces stationed in the region since 1949. Yet the prohibition of enforced disappearances was absolute, whatever the circumstances. The Commission must thus modify its priorities with regard to its obligations to missing persons in conflict zones where United Nations observers were rendered powerless by the State concerned, which violated United Nations resolutions with total impunity. It was therefore vital that the Commission should find a means of compelling the States concerned to respect those resolutions. Kashmir had

been cut off from the outside world since January 1990. It was a welcome sign that India had decided to allow independent observers into Kashmir, but it was legitimate to ask why it denied that right to the Kashmiris themselves. It was high time that the United Nations and all NGOs helped India and Pakistan to settle the problem of Kashmir, where massive violations of human rights were being committed, as was attested by the 1994 reports of Amnesty International and other NGOs, and by the reports of the United Nations military observers stationed in the region.

53. Human rights were the responsibility of all. It was necessary to be aware of them, to claim them, and to defend them. The Commission on Human Rights must help those who were not aware of them, such as the mother of Javed Ahmad Ahangar, who had disappeared in Jammu and Kashmir in August 1990. Humankind was destroyed not by suffering, but by meaningless suffering. The Commission was under a legal and moral duty to give meaning to the sufferings of the human race throughout the world, and in particular in Kashmir.

54. Mrs. DAURE-SERFATY (Movement Against Racism and for Friendship Among Peoples) drew attention to the many cases of disappearances in the Maghreb countries which had not been resolved since its last session.

55. In Algeria, the situation prevailing throughout the country made it impossible to put an exact figure on the number of enforced disappearances, generally of persons suspected of having links with Islamic fundamentalist organizations. It was certain, however, that the number of disappeared persons was very high and that their fate was a source of extreme concern. In Tunisia, the statutory maximum period of police custody was 10 days, but by falsifying dates of arrest, the police were able to extend its duration to a month or more. During those periods, the persons arrested could be regarded as having disappeared. In Mauritania, international human rights organizations had counted 500 victims of summary executions in November 1991, but those deaths had still not been acknowledged by the Mauritanian State. Furthermore, those cases had been shelved as a result of the promulgation of the Amnesty Law in June 1993, and the 500 victims could therefore be regarded as having disappeared. Her organization was also concerned about the fate of Mr. Mansour Kirhia, the former Libyan Minister for Foreign Affairs, who had been abducted in Cairo, while on a visit at the invitation of the Arab Organization for Human Rights, and of whose whereabouts nothing had been heard since. His abduction on foreign territory brought to mind two other unsolved cases of disappearance involving Moroccan citizens, namely, that of the Moroccan opposition figure Mehdi Ben Barka, abducted on 29 October 1965 in Paris, whose body had never been found, and that of the Moroccan political and trade union activist Hocine El Manouzi, abducted on 1 November 1972 at Tunis airport, who had subsequently surfaced in clandestine detention centres in Morocco, but of whom nothing more had been heard since his escape attempt on 10 July 1975.

56. Disappearances in Morocco itself revealed that they constituted a very long-standing practice there, since several hundred cases had still not been elucidated. What little progress had been made in that respect in 1991, such as the reappearance of Mrs. Oufkir and her children on 26 February 1991, after 19 years of disappearance, the release on 23 June 1991 of 270 civilians from the secret prison at Kalaa M'Gouna, and the release of the Bourequat

brothers from the secret prison of Tazmamart on 15 September 1991, had raised hopes that had soon been dashed; for during the period of two years that had elapsed since then no other case had been resolved, despite the efforts made by Moroccan organizations for the defence of human rights and the appointment in November 1993 of Mr. Omar Azziman - a person noted for his integrity - to the post of Minister of Human Rights. The failure to elucidate the large number of cases of enforced disappearance was likely to obscure the progress made in 1991 and seriously damage the prestige of Morocco, where the GATT agreements were to be signed in April 1994.

57. She cited the names of several disappeared persons who were members of the most targeted groups, namely, political or trade union activists, some of whom had been missing for 30 years, Sahrawris, all arrested on the territory in which the United Nations was to organize a referendum, and members of the military tried in 1972 following coups d'état, some of whom had since died, but who could be regarded as having disappeared, since their families had never received official notification of their deaths. Lastly, she referred to the case of the commandant de gendarmerie Mohamed Bouattar, who had been missing since 13 January 1983, whose name appeared on no lists and who had never been referred to publicly since - a truly classic case of enforced disappearance.

58. Mr. MORA GODOY (Cuba), speaking in exercise of the right of reply, said that the two persons currently imprisoned in Cuba, whose cases had been referred to by the representative of International PEN in her statement, were neither journalists nor writers. They were serving prison sentences for terrorism and sabotage.

The meeting rose at 6.05 p.m.